

EXISTING RULE 14(b)(2)

(2) Defense of Lack of Criminal Responsibility Because of Mental Disease or Defect.

(A) Notice. If a defendant intends to rely upon the defense of lack of criminal responsibility because of mental disease or defect at the time of the alleged crime, the defendant shall, within the time provided for the filing of pretrial motions by Rule 13(d)(2) or at such later time as the judge may allow, notify the prosecutor in writing of such intention. The notice shall state:

(i) whether the defendant intends to offer testimony of expert witnesses on the issue of lack of criminal responsibility because of mental disease or defect;

(ii) the names and addresses of expert witnesses whom the defendant expects to call; and

(iii) whether those expert witnesses intend to rely in whole or in part on statements of the defendant as to his or her mental condition at the time of the alleged crime or criminal responsibility for the alleged crime.

The defendant shall file a copy of the notice with the clerk. The judge may for cause shown allow late filing of the notice, grant additional time to the parties to prepare for trial, or make such other order as may be appropriate.

(B) Examination. If the notice of the defendant or subsequent inquiry by the judge or developments in the case indicate that statements of the defendant as to his or her mental condition at the time of, or criminal responsibility for, the alleged crime will be relied upon by expert witnesses of the defendant, the court, upon its own motion or upon motion of the prosecutor, may order the defendant to submit to a psychiatric examination consistent with the provisions of the General Laws and subject to the following terms and conditions:

(i) The examination shall include such physical and psychological examinations and physiological and psychiatric tests as the examiner deems necessary to form an opinion as to the mental condition of the defendant at the time the alleged offense was committed. No examination based on statements of the defendant may be conducted unless the judge has found that (a) the defendant then intends to offer at trial psychiatric evidence based on his or her own statements or (b) there is a reasonable likelihood that the defendant will offer that evidence.

(ii) No statement, confession, or admission, or other evidence of or obtained from the defendant during the course of the examination, except evidence derived solely from physical or physiological observations or tests, may be revealed to the prosecution or anyone acting on its behalf unless so ordered by the judge.

(iii) The examiner shall file with the court a written psychiatric report which shall contain his or her findings, including specific statements of the basis thereof, as to the mental condition of the defendant at the time the alleged offense was committed.

The report shall be sealed and shall not be made available to the parties unless (a) the judge determines that the report contains no matter, information, or evidence which is based upon statements of the defendant as to his or her mental condition at the time of, or criminal responsibility for, the alleged crime, or which is otherwise within the scope of the privilege against self-incrimination; or (b) the defendant files a motion requesting that the report be made available to the parties; or (c) during trial the defendant raises the defense of lack of criminal responsibility and the judge is satisfied that (1) the defendant intends to testify or (2) the defendant intends to offer expert testimony based in whole or in part upon statements of the defendant as to his or her mental condition at the time of, or criminal responsibility for, the alleged crime.

If a psychiatric report contains both privileged and nonprivileged matter, the court may, if feasible, at such time as it deems appropriate, make available to the parties the nonprivileged portions.

(iv) If a defendant refuses to submit to an examination ordered pursuant to and subject to the terms and conditions of this rule, the court may prescribe such remedies as it deems warranted by the circumstances, which may include exclusion of the testimony of any expert witness offered by the defense on the issue of the defendant's mental condition or the admission of evidence of the refusal of the defendant to submit to examination.